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International legal dimension of anti-corruption in

The formation of a modern legal framework for the fight against corruption in Ukraine has been significantly influenced by international acts that have become part of national legislation. But the key to their implementation is not only their ratification, but also the correct process of implementing the provisions of the law into the legislation of Ukraine. Therefore, in the article we have considered the main points and issues of international regulation in this area, which, in our opinion, were not quite correctly perceived by our legislators. The purpose of the article is to review the results of bringing national anti-corruption legislation to international standards

The formation of a modern legal basis for combating corruption in Ukraine was significantly influenced by international acts, which became part of national legislation after the Verkhovna Rada of Ukraine made them binding. However, it should be noted that the fact that Ukraine has agreed to be bound by an international agreement does not give grounds to claim that these acts have become part of our legislation and have improved it. The key to this is only the correct process of implementation of the provisions of the act in the legislation of Ukraine.

It will be recalled that the last of the anti-corruption conventions was ratified by Ukraine in 2006 [1]. However, until 2014, many of its provisions remained at the level of declarations, and Ukraine's anti-corruption strategy is still far from ideal.

Consider the results of bringing national anti-corruption legislation to international standards at the moment. This process is described in detail in the letter of the Ministry of Justice of Ukraine "Ukraine's participation in international cooperation in preventing and combating corruption" [2], and therefore we will only dwell on the main points and issues of international regulation in this area, which, in our opinion, were not quite correctly perceived by our legislators.

The above-mentioned UN Convention against Corruption, ratified on 18 October 2006, stated that States parties were concerned about the seriousness of the problems posed by corruption and the threats to the stability and security of societies, which undermined democratic institutions and values, ethical values and justice. and the principle of the rule of law. The Convention proclaimed that the prevention and eradication of corruption is the responsibility of all States and that, in order to ensure the effectiveness of their efforts in this area, they must cooperate with each other with the support and participation of individuals and groups outside the public sector. Each State Party shall develop and implement anti-corruption policies based on the rule of law, the proper management of public affairs and state property, justice, equality before the law, honesty and integrity, transparency and accountability, and the promotion of a culture that rejects corruption. It should be emphasized that the Convention offers a wide range of organizational, legal, social and cultural measures to combat corruption.

Considerable attention in the document is paid to the responsibility of legal entities and individuals. Yes, in accordance with Art. 26 of the Convention, each State Party shall take such measures as may, taking into account its principles of law, be necessary to establish the liability of legal persons for the offenses set forth in the present Convention. Subject to the principles of the law of a State Party, the liability of legal persons may be criminal, civil or administrative. Bringing to such responsibility does not deny the criminal liability of individuals who have committed crimes. Each State Party shall also ensure that criminal or non-criminal sanctions, including monetary sanctions, are applied to legal persons who are prosecuted, effective, proportionate and dissuasive.

Note also that according to paragraph 2 of Art. 65 of the Convention, each State Party may take more stringent measures to prevent and combat corruption than those provided for in the Convention.

It should be noted that the main provisions of the UN Convention against Corruption have been and remain common international standards in the fight against corruption. At the regional level, only the provisions of this Convention relating to specific branches of law are adapted to the regional specifics of the legal system. In particular, Europe has adopted the Civil Convention for the Suppression of Corruption, the Criminal Convention for the Suppression of Corruption and the Additional Protocol to the Criminal Convention for the Suppression of Corruption, which Ukraine has successfully ratified.

Therefore, it is necessary to further analyze how the legislator has taken into account the general standards of anti-corruption policy and standards in some of its areas, in particular, criminal and civil, in accordance with the above Conventions.

The research draws attention to such a conceptual miscalculation of power in building a system of legislative support against corruption as a violation of the logic of its formation, which was to be carried out according to the following scheme: concept - strategy - law - program - bylaws. Yes, some regulations were adopted at different times a single scientifically sound concept of combating corruption.

This discrepancy has now been fixed. The legislator in the formation of anti-corruption legislation, although he missed the link "concept", but then everything is built according to the necessary logic.

At the end of 2014, Ukraine adopted the Anti-Corruption Strategy for 2015-2017 [3], which, according to the legislator, should become a new strategic document that would identify priority measures to prevent and combat corruption, which should create a basis for further reform. in this area. But are UN standards taken into account in this document?

The UN Convention against Corruption clearly identifies areas that should be a kind of conceptual "rods" of preventing and combating corruption (Articles 5-14):

- policy and practice of preventing and combating corruption;
- body or bodies for prevention and counteraction of corruption;
- public sector;
- codes of conduct for public officials;
- public procurement and public finance management;
- state reporting;
- measures concerning the judiciary and the prosecutor's office;

- private sector;
- participation of society;
- measures to prevent money laundering.

Of course, by its very existence, the Strategy corresponds to the first point of the above. According to Part 1 of Article 5 of the Convention: "Each State Party shall, in accordance with the fundamental principles of its legal system, develop and implement or pursue an effective coordinated anti-corruption policy." Thus, time will tell whether a strategy has been developed and whether an effective coordinated policy will be implemented on its basis.

Section 2 of the Strategy, entitled "Formation and Implementation of the State Anti-Corruption Policy", contains in fact the provisions concerning the organization and activities of the specially authorized body for the prevention of corruption. That is, the second standard direction of preventing corruption is also taken into account.

The policy and practice of preventing and combating corruption under the Convention also provides for a periodic evaluation of relevant legal instruments and administrative measures to determine their adequacy in terms of

preventing and combating corruption. The strategy also includes measures to formulate and implement state anti-corruption policy and report to relevant bodies, as well as an analysis of the state of corruption, and the approval of a national methodology for assessing corruption in accordance with UN standards. However, it is unclear why the provisions on performance evaluation are still repeated in Section 6 of the Strategy.

Section 3 of the Strategy, entitled "Prevention of Corruption", sets out the main measures that are broadly in line with the above-mentioned paragraphs of the UN Convention against Corruption:

- Areas "Prevention of Corruption in Representative Bodies", "Establishment of a Fair Public Service", "Prevention of Corruption in the Activities of Executive Bodies" include measures under the Convention "Public Sector", "Codes of Conduct for Public Officials";

- "Prevention of corruption in the field of public procurement" is in line with the Convention "Public Procurement and Public Financial Management";

- "Prevention of corruption in the judiciary and criminal justice" - "Measures against the judiciary and the prosecutor's office";

- "Prevention of corruption in the private sector" - "Private sector";

- "Access to information" - "State reporting";

- Provisions on "Public Participation" are provided in the general provisions of anti-corruption policy, in the private sector and in Section 5 "Formation of a negative attitude towards corruption";

- "Measures to prevent money laundering" are provided for in certain provisions relating to liability for corruption.

Thus, the new domestic Anti-Corruption Strategy for 2015-2017 meets UN standards, which are recognized by the international community. According to the logical scheme of building legislative regulation in a certain area on the basis of the Strategy, a new special Law of Ukraine "On Prevention of Corruption" [4] was adopted, which incorporated these international standards and developed them.

References

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